STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 24, 2014
v	No. 311850 Wayne Circuit Court
ANTONIO DANARD STALLING, Defendant-Appellant.	LC No. 12-001195-FC

Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

GLEICHER, J. (*concurring*).

I concur with the majority opinion's decision to affirm defendant's convictions. However, I respectfully disagree with the majority opinion's analysis of defendant's public trial argument.

The trial court closed the courtroom during opening statements and closing arguments because it feared that people entering or exiting through a door facing the jury box might distract the jurors. A trial court may close a courtroom under rare and special circumstances. This was not one of them.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a . . . public trial." Const 1963, art 1, § 20 similarly guarantees that a criminal defendant "shall have the right to a . . . public trial . . . ." In *Waller v Georgia*, 467 US 39, 48; 104 S Ct 2210; 81 L Ed 2d 31 (1984), the United States Supreme Court established that to justify closing the courtroom, the party seeking closure "must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." The closure in this case failed to satisfy this standard. The trial court considered no alternatives to closure (such as a sign advising that arguments were in progress) and made no specific findings justifying closure. Furthermore, it defies logic that an "overriding interest" in avoiding disruption would exist only during counsels' arguments and not throughout the presentation of the proofs.

"Trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials." *Presley v Georgia*, 558 US 209, 215; 130 S Ct 721; 175 L Ed 2d 675 (2010). The United States Supreme Court has applied that obligation to jury selection and suppression hearings. The Court emphasized in *Presley* that the right to a public trial extends to

"any stage of a criminal trial." *Id.* at 724. I can think of no reason for relieving courts of this responsibility during opening statements and closing arguments. Indeed, closing argument often supplies the most intense and meaningful moments in a trial.

The majority opinion expresses that because the trial court did not clear the courtroom, members of the public likely were present when the doors were closed, and defendant has failed to identify anyone with an interest in the proceedings who was excluded. I take no solace in these observations. The trial court made no record of those present and those who left to avoid being "locked in." Absent any demonstration of an "overriding interest that is likely to be prejudiced," closing the courtroom to the public during two important portions of a criminal trial clearly violates a Constitutional mandate. *Waller*, 467 US at 48. Moreover, in *Waller*, the United States Supreme Court stated clearly that "the defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee." To require a defendant to identify interested parties who were turned away after meeting a closed and locked door presents an insurmountable obstacle to vindication of a clearly established constitutional right.

I would hold that the trial court's courtroom closure constituted structural error. However, because defendant's attorney neglected to object, *People v Vaughn*, 491 Mich 642, 650; 821 NW2d 288 (2012), we are compelled to employ plain error review. Under that exacting standard, defendant has failed to establish entitlement to relief.

/s/ Elizabeth L. Gleicher